

HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b))

Description of the case.

W.P. No. 1938 of 2005 (S/S)

Gauri Singh

Vs

State of Uttaranchal & others.

Approved for reporting

~~Not approved for reporting~~

Dated of decision 21.12.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1938 of 2005 (SS)

Gauri Singh S/o Sri Fateh Singh,
R/o Village Nisni,
Post Office Buwakhal,
District Pauri Garhwal.

.....Petitioner

Versus

1. State of Uttaranchal
Through Secretary
Public Works Department,
Dehradun.
2. Chief Engineer,
Public Works Department,
Dehradun.
3. Executive Engineer,
Construction Division,
P.W.D., Pauri,
District Pauri Garhwal.

..... Respondents

Sri Nandan Arya, Advocate for the petitioner
Standing counsel for the respondents.

Dated: 21.12.2005

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ commanding the respondents to release pension in favour of the petitioner.

Briefly stated the facts giving rise to the present writ petition are that the petitioner was initially engaged as a Beldar on a class IV post in the year in P.W.D. According to the petitioner he retired

from service on 31.01.2004. He was serving in a grout 'D' post and the age of retirement for such posts is 60 years. The petitioner has also stated that he was appointed as work charge employee on 29.1.1988 and thereafter on 18.7.2000 he was regularised. The petitioner thus served in P.W.D. for more than 23 years.

The petitioner has further submitted that he has made several representations regarding pensionary benefits but till today pension has not been released in his favour.

In the case Santosh Kumar Mishra vs. State of U.P. and others (2002) 1 UPLBEC 337 it has been held as under:

“7. Learned counsel for the petitioner has placed reliance upon the case of Raj Narain Prasad (supra), for stressing his submission that the petitioner’s father would be deemed to have been a regular Government servant in view of the fact that his appointment has been converted into workcharge employee in pursuance of the scheme approved by the Apex Court. He further submitted that in view of the decision rendered in the case of Smt. Pushp Lata Dixit Vs Madhyamik Shiksha Parishad and others reported in 1991 (18) ALR 591, the petitioner is entitled for getting the appointment. In this case, the husband of Smt. Pushp Lata was working as Paid Apprentice. The plea that he was not a regular employee although he had been working in the department for the last 17 years was not entitled for appointment under dying in Harness Rule was rejected by the Court and the directions were issued to accommodate the petitioner (S.t. Pushp Lalt) according to her qualifications relying upon this case, the writ petition filed by Smt. Maya Devi V State of U.P. and others reported in 1998(79) FLR 608, was also allowed in which the High Court found that the petitioner’s husband in that case has satisfactorily worked for about 10 years until his death and

though he may be a daily wager, the petitioner can be accommodated on compassionate grounds under Dying In Harness Rules. In the case of Smt. Saroj Devi V State of U.P. and others reported in 1999(3) ESC 2187 (All): (2000) 1 UPLBEC (Alld.) (Sum.) 15, the benefit was given to the temporary appointee as he was working against a substantive vacancy.

11. The Apex Court found that even though a workcharge employee is confirmed, his status does not change from that of a work charge employee and that he would be entitled to be benefits which are available to him under the aforesaid Rules of 1978 but in view of the scheme, no appointment can be given to him under the said scheme.

12. The Apex Court was considering the Scheme and the status of a work charge employee even after being confirmed it has been held that a workcharge employee after confirmation does not cease to be a work charge employee and he continues to be a workcharge employee. The question of regularisation against a regular vacancy was not in issue before the Apex Court No rule, law or any Government Order has been brought to the notice of this Court by the State to indicate that any terminal benefits have been provided to the workcharge employee indicate that any terminal benefits have been provided to the workcharge employee who have to their credit a considerable period of service and even in cases after very longer period of service, they retire as such. Even no provision for confirmation of a work charge employee as a workcharge employee is available in the State of Uttar Pradesh nor any such provision has been shown by the learned State Counsel despite being specifically asked for.

13. From the facts of the case of Thingujan Borjen Meetal (supra) it is clear that the scheme framed by the Government confine the benefits to the regular Government employees as

per provisions of para 3 and the workcharge employees are covered by another set of Rules of 1978. it is also obvious that their Lordships of the Supreme Court did not have an occasion to consider the question of daily wage or a work charge employee who has been allowed to continue for a considerable length of service and has legitimate expectation of being regularised against a vacancy if the regular vacancy is not available at the time when he was engaged on daily wages or was converted into a workcharge employee in the workcharge establishment.

14. The practice of appointing daily wagers or workcharge employee is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or workcharge employees in the Government departments have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government servant but they are disposed with their engagement on attaining the age if superannuation. The practice of appointing such daily wagers and workcharge employee has constantly been matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued direction for framing schemes so as to accommodate all daily wagers of land standing duration and workcharge employees as a regular employee, it would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many others departments.

16. It may also be taken note of that if daily wager or a workcharge employee is engaged against a particular duty or post, and that work is of perennial nature, the presumption

would be that such an employee would be entitled for being treated to have been continuing against a regular vacancy.

18. It is also not disputed that appointments of such nature have already been given by the department earlier and the respondent State has not been able to indicate as to why the same benefit has not been given to the petitioner.”

I have also taken a view in the case *Mst. Mangali vs. State of Uttaranchal & others* 2004 (1) U.D. 144 that even a work charge employee is entitled for a benefit regarding compensatory appointment. Following directions were given in the said judgment:

“23. In view of the aforesaid facts and circumstances, a writ of mandamus is issued directing the respondents to consider the appointment of the petitioner under Dying-in-Harness Rules.

24. Further a writ of mandamus is issued directing the respondents to pay the pension, gratuity and the salary due to the decesased as well as the arrears of salary; pension and gratuity with interest at the rate of 10% per annum.

25. Respondents are directed to comply the aforesaid directions within a period of one month from the issue of the certified copy of the order.

26. Consequently, the writ petition is allowed. There will be no order as to costs.”

In view of the aforesaid facts and circumstances the respondent Authority is directed to release pensionary benefits to the petitioner within two months after the receipt of the certified copy of this judgment.

The writ petition is accordingly allowed. No order as to costs.

(Rajesh Tandon, J.)

21.12.2005

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